

## REMARKS/ARGUMENTS

This Amendment and Response is submitted in reply to the final Office action dated July 25, 2008, which sets forth a shortened three-month statutory period for reply. The Applicant thanks the Examiner for reviewing this application and issuing an Office action.

Claims 28-44 are pending in the application, with claim 28 being an independent claim. New claim 67 is added. Support for this claim may be found at least in paragraphs [00152]-[0163] of the present application. Previously, claims 1-27 and 59 were canceled and claims 45-58 and 60-66 were withdrawn. Accordingly, after entry of this Amendment and Response, claims 28-44 and 67 remain pending.

### I. Claim Rejections Under 35 U.S.C. § 102(e)

The Examiner rejected claims 28-31, 33, 34, 40, 42 and 43 under 35 U.S.C. § 102(e) as being anticipated by United States Publication No. 2002/0120705 to Schiavone et al. (hereinafter "Schiavone"). Under 35 U.S.C. §102 "[a] claim is anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See MPEP § 2131. For the following reasons recited below, the Applicant respectfully submits that Schiavone does not anticipate any of the above listed claims. Initially, the Applicant addresses the rejection of independent claim 28 in light of Schiavone.

#### **A. Independent claim 28 is patentable because Schiavone fails to disclose that a frank is purchased from a franking server that maintains an account associated with at least one user.**

Amended independent claim 28 requires that a "frank is purchased from a franking server maintaining at least one account associated with at least one user." Support for this amendment can be found in at least paragraphs 0078 and 0079 of the present application. The Applicant respectfully submits that Schiavone fails to teach this limitation.

Schiavone describes a system for controlling distribution of communications. To control the communications, the system of Schiavone receives an incoming message that "either carries priority information, or is assigned priority information." See *Schiavone, Abstract*. Based on the priority information attached to the incoming message, the system in Schiavone determines "how and/or when to deliver the e-mail message." See *Schiavone, para. 0034*. Assuming, for the sake of argument, that priority information is comparable to a frank as

described by the present application, the Applicant respectfully submits that Schiavone fails to anticipate amended independent claim 28.

As described above, Schiavone discloses attaching priority information to an incoming message to determine how to deliver the message. Further, Schiavone states that “higher priority treatment may be sold or purchased to senders as desired to obtain higher priority treatment.” See *Schiavone*, *parag. 0017*. However, Schiavone is noticeably silent on how and from where the higher priority is purchased. Instead, the quoted text from Schiavone constitutes the entire disclosure of purchasing a higher priority treatment. Also, the purchase of a higher priority in Schiavone may occur in several ways. For example, higher priority treatment for the communication may be purchased from a kiosk or may be purchased at the time the communication is created. Because Schiavone fails to disclose any method of purchasing higher priority, including failing to disclose where the higher priority may be purchased from, Schiavone fails to anticipate amended independent claim 28.

**B. Dependent claims 29-32, 33, 34, 40, 42 and 43 are patentable because they depend upon and contain all of the limitations of independent claim 28.**

The Examiner rejected dependent claims 29-32, 33, 34, 40, 42 and 43 as being unpatentable over Schiavone. These claims depend, either directly or indirectly, from independent claim 28. Therefore, for at least the reasons given with respect to that claim, the Applicant asserts that dependent claims 29-32, 33, 34, 40, 42 and 43 are also patentable over Schiavone. The Applicant makes this statement without reference to or waiving the independent basis of patentability within each dependent claim.

**C. Conclusion**

For at least the reasons set forth above, Schiavone fails to disclose all of the limitations of claims 28-31, 33, 34, 40, 42 and 43. Accordingly, the Applicant respectfully submits that these claims are allowable over the cited art. The Applicant thus respectfully requests that the Examiner withdraw the rejections and allow these claims over the cited reference.

**II. Claim Rejections Under 35 U.S.C. § 103**

The Examiner rejected claim 32 under 35 U.S.C. § 103(a) as being unpatentable over Schiavone. The Examiner next rejected claim 35 under 35 U.S.C. § 103(a) as being unpatentable over Schiavone in view of United States Patent No. 5,694,616 to Johnson et al. (hereinafter “Johnson”). The Examiner next rejected claims 36-39 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Schiavone in view of United States Patent No. 6,393,464 to

Dieterman et al. (hereinafter "Dieterman"). Finally, the Examiner rejected claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Schiavone in view of United States Patent No. 6,301,608 to Rochkind (hereinafter "Rochkind").

A proper prima facie obviousness rejection requires that the combined references teach or suggest all of the claim limitations. See MPEP § 2143. For the following reasons recited below, it is respectfully submitted that the combined references fail to teach the limitations of the rejected claims.

The Examiner rejected dependent claims 32, 35-39, 41 and 44 over Schiavone in combination with Johnson, Dieterman and Rochkind. However, these rejected claims all depend, either directly or indirectly, from independent claim 28. Therefore, for at least the reasons given with respect to that claim, the Applicant asserts that dependent claims 32, 35-39, 41 and 44 are patentable over the combined references. The Applicant makes this statement without reference to or waiving the independent basis of patentability within each dependent claim. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejections and allow these pending claims over the cited references.

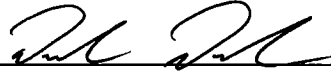
### **III. Conclusion**

After entry of the above listing of claims and remarks, claims 28-44 and 67 remain pending in the application. In accordance with the amendments and arguments set forth herein, the Applicant respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance.

This Amendment and Response is submitted contemporaneously with a Request for Continued Examination fee. Accordingly, please charge Deposit Account No. 04-1415 in the amount of \$810.00. The Applicant believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415. Should any issues remain that the Examiner believes may be dealt with in a telephone conference, he is invited to contact the undersigned at 303-629-3400.

Dated: October 27, 2008.

Respectfully submitted,



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